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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re AUTUMN K., a Person Coming Under the Juvenile Court Law.	
DEL NORTE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. PATRICIA M., Defendant and Appellant.	A141991 (Del Norte County Super. Ct. No. JVSQ11-6026)

For the second time in this Welfare and Institutions Code section 300[1] dependency proceeding, mother Patricia M. appeals from the juvenile court's order terminating her parental rights to minor Autumn K. and selecting adoption as the permanent plan for Autumn. Patricia asserts three essential errors that she claims mandate reversal: (1) respondent Del Norte County Department of Health and Human Services (Department) failed to use active efforts to find a placement for Autumn, a member of the Chickasaw Nation, that complied with the placement preferences established by the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1903 et seq.), and the Chickasaw Nation Code; (2) the juvenile court erred in finding good cause to deviate from the placement preferences, allowing for Autumn's adoption by her foster parents, Amanda

[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and Caleb C. (collectively, the C.'s), rather than her maternal grandparents, Teresa and José R. (collectively, the R.'s), or her maternal aunt, Beatriz R.[2]; and (3) the juvenile court erred in failing to apply the Indian child exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(vi)(I).)

We conclude Patricia's arguments lack merit, and we affirm.

I. BACKGROUND

Postremand Proceedings

On November 20, 2013, we issued our opinion reversing the juvenile court's first order terminating the parental rights of Patricia and father Bryan and ordering adoption as the permanent plan for Autumn. (*In re Autumn K.* (2013) 221 Cal.App.4th 674.) That opinion thoroughly detailed the facts giving rise to this dependency proceeding and the events leading up to the juvenile court's order, including the Department's refusal to evaluate a request by José for an exemption of his criminal record and corresponding failure to consider the R.'s home as a placement option for Autumn. We are intimately familiar with this background, as are, no doubt, the parties, and we need not reiterate it here. We instead focus only on the events following remand that are directly relevant to the court's second order terminating parental rights and placing Autumn for adoption, which are these:

Following remand, Autumn continued to reside with Amanda and Caleb and their three daughters,[3] regularly visiting with her grandmother Teresa and some of her six half siblings who lived with Teresa under guardianships. The visits were initially four hours per week, later increasing to five hours per week. Patricia was living in San Francisco, with an outstanding felony warrant out of Del Norte County. Beatriz, Patricia's sister, had moved from Oregon to Crescent City and was living four doors down from Teresa and José. Bryan was incarcerated at the California Correctional Center and had no visitation with Autumn.

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[2] Also spelled Beatrice in the record.

[3] Autumn and Amanda are second cousins, once removed.

In accordance with our opinion, the Department reevaluated José's request for an exemption of his criminal record. It granted an exemption, rendering the R.'s home available for consideration as a placement option for Autumn. The court set the matter for a section 366.26 hearing to reselect and implement a permanent plan for Autumn.

On February 7, 2014, Arthur Ellsworth, director of the Chickasaw Nation's Office of Child Welfare Services, submitted a letter to the court in which he requested that Autumn "be placed in accordance with Chickasaw legal and cultural standards." Mr. Ellsworth went on to explain: "Chickasaw culture places a high value on the matrilineal line and as such the Chickasaw Nation requests that the maternal grandmother, Teresa [R.,] be afforded the first placement preference and then the maternal aunt, Beatrice [P.] the second placement preference and finally any other placement(s) deemed appropriate by the Chickasaw Nation." According to Mr. Ellsworth, this order of preference complied with the Chickasaw Nation Code and the tribe's child-rearing practices. He also expressed his belief that the C.'s were not a preferred placement and were therefore not culturally appropriate. He concluded by urging the court "to consider the potential effects of not living with one[']s siblings and how that will impact Autumn's own development and future relationships if she is not placed in the home of" her grandmother.

The Department's Section 366.26 Report

On April 7, 2014, the Department submitted an updated section 366.26 report, again recommending that Patricia's and Bryan's parental rights be terminated and Autumn be adopted by the C.'s. The 27-page report was exhaustive, detailing the extensive legal history of the case dating back to when the Department filed the section 300 petition in February 2011. Much of what was contained in the report would later be the introduced at the section 366.26 hearing, and we discuss it in conjunction with our summary of that hearing. We do, however, point out one significant component of the report that came much to our surprise: it identified more than 30 child welfare referrals dating back to 1984 involving the R. family, all alleging physical abuse, sexual abuse, or neglect of the R.'s children or grandchildren. The family's extensive history

with the child welfare system was not even hinted at in the record of the prior appeal, which had suggested the R.'s were an "ideal placement" for Autumn. (*In re Autumn K., supra,* 221 Cal.App.4th at p. 706.)

The Department concluded its report with a lengthy assessment of the permanency issue. It had considered both the R.'s and C.'s homes for placement and "determined that both homes have something to offer Autumn and neither home is perfect." But, it explained, "there are many more concerns in the [R.] household. Even if the criminal and child welfare history was a non issue, the constant turmoil that [Teresa] allows [Patricia] to create causes the Department great concern. [Teresa] has informed the Department on multiple occasions that she can set healthy boundaries and she is tired of [Patricia's] drama. However, her actions and reactions demonstrate otherwise."

Noting that our prior opinion instructed the Department to make active efforts to locate an ICWA-compliant placement for Autumn, the Department said this about its efforts to do so:

"Throughout the life of this case the Chickasaw tribe has gone through at least four social workers . . . and their opinion as to whether or not the [C.'s] are an ICWA placement has fluctuated depending on when they were asked. The kinship ties to Autumn were originally brought forward by [Patricia] and [Teresa] when they requested Autumn be placed in the [C.'s] home. The tribe agreed the [C.'s] were family and clearly stated in their report submitted to the court dated January 2012 that the home was a 'relative placement, which is compliant with state and federal ICWA.' In the same report under the heading 'Permanency Plan' Mrs. [Regena] Frye [(the tribe's ICWA social worker)] wrote 'The concurrent case plan goal is adoption.' Thus, at this point the tribe was in support of adoption and considered the [C.'s] to be an ICWA compliant home. The Department is unclear at which point the tribe decided the [C.'s] were not ICWA compliant. Only when a letter stating their preferences was requested by the Department, did the tribe submit a formal letter in February of 2014 claiming the [C.'s] did not meet the placement preferences. Conversely, the fourth placement preference that was listed in

their letter was a foster home licensed by the Department, which the [C.'s] were at the time Autumn was placed in the home.

"The tribe also stated in their letter that if [Teresa's] home is not approved they would like Autumn to move with her maternal Aunt Beatrice. The Department provided the aunt with a placement packet and she returned it in December of 2013. The undersigned conducted a home visit on December 16, 2013. Aunt Beatrice then completed her fingerprints. However, as of the time of writing this report, her husband has yet to be fingerprinted and Aunt Beatrice has yet to turn in the exemption paperwork for her criminal record. The Department notified the tribe of the Aunt's lack of follow-through on January 16, 2014. On December 12, 2013, the Department asked the Chickasaw tribe if they would like the Department to consider any other relatives for placement. On December 13, 201[3], the ICWA social worker, Kendra Lowden stated that she was 'not aware of any other family members at this time.' The Department has serious concerns recommending moving Autumn from the people she loves and views as her family to her Aunt's or to any other family members that have not been active in this case. Even [Patricia] has stated that she would not want Autumn to move to a stranger's house if Autumn could not live with her mother or her sister. It is concerning that her tribe would suggest doing so."

After acknowledging the importance of keeping Native American children connected to their culture and summarizing the efforts of the R.'s and the C.'s to connect Autumn with her native heritage, the Department explained why there was good cause to deviate from the ICWA placement preferences in this case: "The Department agrees that placement preferences should be given to the child's adult relatives provided they are suitable caregivers and meet all relevant child protection standards. When Autumn first became a dependant [*sic*], [Teresa] did not meet these standards as she was understandably unable to care for Autumn due to the fact that she was caring for her sick son. Therefore, there was good cause to deviate from the ICWA placement preferences. [Teresa] has cared for her children and her grandchildren to the best of her ability. However, as evidenced by her own and her husband's child welfare history, it has clearly

been a struggle for them at times. The Department also has concerns regarding [Teresa's] lack of acknowledgement of Autumn's attachment to her foster parents and her unwillingness to allow any contact with Autumn and the [C.'s] if she were to gain custody. Given this significant child welfare history and concerns regarding [Teresa's] ability to act in Autumn's best interest, the Department continues to believe [Teresa] is not the most suitable caregiver for the child. Thus, the Department believes there continues to be good cause to deviate from ICWA placement preferences."

The Department advised that in formulating its recommendation, it used a structured decisionmaking (SDM) tool. According to the Department, the "tool is used to 'provide workers with the critical pieces of information necessary to identify the best placement option for the child' and to 'assess the safety of [a] substitute care provider's household at the time of placement.' " The Department reported that the SDM tool estimated the R.'s household to have a high to very high risk of abuse and/or neglect, based on risk factors including the "significant number of referrals and investigations of abuse and neglect (including substantiations), the fact the family has previously had open child welfare cases, the number of children in the household, and the special needs of some of the children." The C.'s house, on the other hand, had a low risk of abuse or neglect with no identified risk factors. The tool also indicated the R.'s would need a high level of support to make the placement successful, while the C.'s would need a low level of support.

The Department concluded its assessment with this:

"To [Teresa's] credit, she has done what she can to address the Department's concerns, such as taking parenting classes. However, it is not the Department's position that a child should have to wait months or years for a placement to be ready to care for them. Once reunification services are terminated, the focus of the dependency cases should shift to the needs of the child for permanency and stability. Autumn found permanency with another adult relative who was suitable and met the child protection standards. A perfectly happy three year old girl should not have to move from loving, committed relatives that she has been with for over two years into a home that has

substantiated abuse and neglect allegations, child welfare case history, and significant criminal history because closer relatives are now available. The Department is concerned that the focus has been shifted from the needs of Autumn, the child, and defined by the needs of a maternal grandmother who is guilt ridden because she has taken the child's half siblings into her home and was unable to take her daughter's seventh child as well. It is unfortunate that that [*sic*] tribe is so distant and has not had the opportunity to meet Autumn and the people she considers to be parents. If they had, they may decide that it is in actuality in their tribe's best interest to avoid placement disruption and the possibility of creating an attachment disorder in this young child who currently has such a bright future.

"Undoubtedly, this is a complex case with no clear, easy answer. The Department has sympathy for the [R.] and the [C.] households as they are both simply trying to provide a better life for this child than her biological parents could. It is unfortunate that the [R.] and [C.] households were unable to work together as one family to support and care for Autumn. Regardless of the home she is placed in the Department believes Autumn needs to be adopted and there needs to be a plan to keep the non custodial party in contact with Autumn. The Department does not wish to degrade [Teresa] and what she has unselfishly done for her grandchildren. Nevertheless, the Department has staffed this case multiple times, used the evidence based tools that are available, and assessed both homes, and ultimately the Department is unable to recommend moving Autumn as doing so would be detrimental to her well being. Autumn deserves permanency as soon as possible and that was found for her. She should not have to lose her psychological family that she has lived with for over two years and endure a fifth placement change because of a formality that was missed. The Department recommends the Court find that there is good cause to deviate from the tribe's current ICWA placement preferences, that the parental rights of [Bryan] and [Patricia] be terminated, and that the court select and implement a permanent plan of adoption with the [C.'s]."

Adoption Assessment

On April 2, 2014, the California Department of Social Services completed an adoption assessment. It determined Autumn to be adoptable and recommended that the court terminate parental rights and order a plan of adoption. Further, it "believe[d] it is in Autumn's best interest to remain in her current home and experience permanency in this placement through adoption. As second cousins, once removed, who are familiar with tribal practices, this family affords Autumn the most stable placement while also following the placement preference of the Indian Child Welfare Act."

Section 366.26 Hearing

The contested section 366.26 hearing commenced on May 5, 2014, at which time Autumn was almost three years three months old and had lived with the C.'s for two and a half years. The court heard evidence over five days, with the hearing concluding on May 13. We have reviewed the testimony of all witnesses and are well acquainted with the evidence before the court when it rendered its permanency decision. We summarize only the highlights here, which are as follows:

Keith Taylor

ICWA expert Keith Taylor testified that the Department made active efforts to locate an appropriate ICWA-compliant placement, agreeing with the Department's initial decision not to consider the R.'s as a placement option because of José's background. He believed that a person's history with the Department, especially if that person was the subject of multiple referrals, was relevant to the question of whether active efforts were made to place a child with that person. He was also of the opinion that the C.'s fell within ICWA's definition of extended family because the degree to which the C.'s and Autumn were cousins was not significant. He believed Amanda was very committed to keeping Autumn connected to her tribal roots. Despite the tribe's preference that Autumn be placed with Teresa, he believed she should remain with the C.'s.

Georgia England

Social worker Georgia England testified that she had investigated two referrals—one in March 2009, the other in October 2013—that involved allegations of sexual abuse of some of Teresa's grandchildren. The referrals were both determined to be unfounded.

Ms. England acknowledged that 10 months prior to the hearing, one of Autumn's young cousins was temporarily placed with Teresa under a safety plan. The Department did not object to the plan, despite knowing of the R.'s child welfare history.

Susan Wilson

Supervising social worker Susan Wilson confirmed that the Department had received at least 31 referrals involving Teresa and José. She testified as follows concerning five substantiated referrals:

In June 1989, law enforcement went to the R.'s home around 11:00 p.m. and found their children (ages one, five, and 10 years old) home alone. José had been arrested in a drug raid several days before, and Teresa was overwhelmed with the care of her children. It was alleged that the R.'s were drinking heavily and failing to supervise their children.

In November 1994, the Department received a referral based on an allegation that one of the children had been hit with a belt.

In October 1998, there was an allegation that José had physically abused Beatriz. The information conveyed to the Department was that José believed Beatriz had left a school dance with 10 boys, and when she arrived home, he punished her with a belt, leaving substantial bruising on her arms and legs. The Department did not file a section 300 petition but opened a case for voluntary family maintenance. José agreed he would not use a belt to discipline his children and moved out of the home, and the case was closed after six months.

In August 2006, M.C. and J.R. (who were six and nine years old at the time) told a daycare employee that Teresa was mean. J.R. said Teresa had slapped him, causing a scratch under his eye, while M.C. had red marks and what appeared to be fingerprint bruising on his arm, which he said happened when Teresa had grabbed him. When

interviewed, their brother L. reported that J.R. and M.C. were hit daily. The children were detained for one week, and the Department filed a section 300 petition. The petition was later dismissed after J.R. and M.C. recanted their statements, although Teresa agreed to participate in voluntary services.

In November 2006, Teresa was called to pick up Jo. from his Head Start preschool program because he had been disruptive and hurt another child. When Teresa arrived, she was aggressive with him, "cussing about his behavior, unhappy about having to come and pick him up." The incident was concerning enough that Teresa was banned from entering the classroom. An allegation of actual physical abuse was determined to be unfounded, but an allegation that the children were at a substantial risk of physical abuse was substantiated, and Teresa was referred to an anger management program.

Ms. Wilson testified that the Department implemented its current documentation system in 1998. Prior to that time, the R.'s were the subject of the following referrals:

The first documented referral was in 1984, alleging that Teresa frequently hit and yelled at her children. Ms. Wilson was unable to determine the disposition of the referral.

In February 1986, it was alleged that Teresa pulled her children's hair, yanked and jerked them, and hit them with a stick. Those allegations were determined to be inconclusive.

In October 1986, it was alleged that Teresa frequently yelled at and spanked her children. The disposition of that referral was unknown.

A March 1989 referral alleged that Teresa hit one of her children with a meat tenderizer mallet, leaving a bruise. The Department determined that allegation to be inconclusive.

Ms. Wilson believed that Teresa and José were both referred to an alcohol and other drug treatment program at some point, but she did not know whether either of them completed it.

As to the more recent referrals involving the R.'s grandchildren, Ms. Wilson identified them as follows:

In July 2002, the Department received a referral alleging molestation of a four-year-old grandchild by one of the uncles who was living in the home at that time. Law enforcement conducted an investigation.

A March 2003 referral alleged that José hit J.R. in the face with a belt.

An August 2005 referral was based on a report by one of J.R.'s teachers who said she had witnessed Teresa pull J.R. by his arm, throw him into the car, and slap him across the face.

A March 2006 referral was based on a report by J.R. that Teresa hit him with a stick. Teresa admitted she hit him with a back scratcher.

A June 2006 referral alleged that then two-year-old Jo. was hitting people at school. When the teacher explained to him that hitting is not good, he responded that Teresa hits him and pointed to his face. A social worker spoke with Teresa and told her to stop hitting the children.

In November 2007, Jo. went to school with a bloody nose. When asked what had happened, he said Teresa hit him because he would not go to sleep. Teresa told the social worker she had spanked him for wetting his pants and his nose started to bleed. Jo. then changed his story, agreeing with Teresa that she had spanked him on his bottom, and his nose started to bleed.

In February 2008, Teresa left her three-month-old grandchild in her van for five minutes while she went to pick up Jo. from Head Start.

In November 2008, Patricia was staying at the R.'s house because she was homeless. A parole agent conducted a check and arrested Patricia, who tested positive for methamphetamine. All of the children were drug tested, and one had a positive test.

In March 2009, the Department received a call from the sheriff's office concerning a report that José was sexually abusing Jo. A witness reported having walked into José's bedroom to find him under the covers with Jo., rubbing Jo. and asking, "Is that good? How does that feel?"

In April 2012, Jo. reported that José hit him in the mouth for using foul language. When a social worker went to the house to investigate the referral, 14-year-old J.R.

claimed that he was the one who hit Jo. in the mouth because he was being disrespectful to their grandparents. Jo. disputed that was the case, repeatedly stating that it was José who hit him. Teresa denied José hit Jo., claiming Jo. had a tendency to lie.

In June 2013, there was a physical altercation between Teresa and 15-year-old J.R. Teresa had asked him to be quiet, and when she attempted to send him to his room, he came at her. The police responded and noted scratches on J.R.'s face and ears. Teresa was not arrested because it appeared she was defending herself.

When asked if Teresa's situation had improved in light of the fact that many of the referrals were quite old, Ms. Wilson answered: "I don't believe that the situation has improved. I think that she believes in corporal punishment, that she and her husband both believe in corporal punishment, that . . . the kids are hit." As she alternatively described it, Teresa gets angry, and when she gets angry, "she strikes out and she hits her kids, hits her grandkids."

In Ms. Wilson's opinion, Teresa was unable to set boundaries with Patricia and would let her into the home if she showed up.

Heather Friedrich

Social worker Heather Friedrich had been assigned to the case since January 2012 and prepared the section 366.26 report. She testified that she had evaluated the C.'s and R.'s homes for placement using various tools available to her, including the SDM tool, which reported a high to very high risk for abuse in the R.'s house. The SDM tool also indicated the R. household would need a high level of support in order for placement of Autumn in their home to be successful. According to Ms. Friedrich, the R.'s extensive child welfare history factored into her placement recommendation because the high number of referrals over a substantial period of time with indications of physical abuse throughout suggested an increased risk of future maltreatment.

Ms. Friedrich also testified that, continuing up to the present, Patricia continued to interject herself into the case and cause turmoil. The ongoing dynamic between Patricia and Teresa would have a negative impact on Autumn if she were placed with the R.'s.

Ms. Friedrich had an opportunity to observe Autumn interact with the C.'s, and she described those interactions as "very loving," explaining: "She's very bonded with them. If you were to see them, you wouldn't think that she wasn't their child. She's very comfortable. She—when you go to her house, she wants to show you her toys. She refers to them as mommy and daddy. She goes to them for comfort."

Ms. Friedrich had also observed Autumn's visits with Teresa, which she described this way: "I think Ms. [R.] tries really, really hard. I think Autumn is a little uncertain at first. And I've only had a chance to—one really recently, the other one was quite a while ago. But during both times I've observed them, she was a little shy at first. And then—then she warmed up. But she doesn't run to her and say, 'Oh, grandma, I missed you' or anything like that."

Ms. Friedrich also testified that there was tension between Teresa and Amanda, and Teresa has been "very adamant" that she would terminate all contact with the C.'s if Autumn were placed with her. Ms. Friedrich explained to Teresa that the C.'s were Autumn's psychological parents and it would have a negative impact on her to sever that relationship. Teresa expressed her belief that Autumn was not bonded with the C.'s and she would be fine. Ms. Friedrich believed Teresa was not thinking about Autumn's best interest but, rather, she was "in this case to win it." Ms. Friedrich was of the opinion Teresa had a hard time balancing the stressors in her life, including her marriage and the grandchildren, especially considering that some had mental health issues.

Ms. Friedrich had also spoken with the C.'s about maintaining contact with the R.'s and Autumn's half siblings if they were to adopt Autumn. They recognized the importance of her having continued contact with her siblings.

As to the Department's active efforts to locate an ICWA-compliant placement for Autumn, Ms. Friedrich testified the Department had evaluated the R.'s household, encouraged Beatriz to complete the approval process, and asked the Chickasaw Nation if there was anyone else it wanted the Department to consider for placement. She indicated that Beatriz had not submitted the necessary paperwork, including requesting a criminal exemption for herself, and her husband had not been fingerprinted.

Ms. Friedrich agreed there were three primary reasons the Department was recommending placement with the C.'s: the R.'s child welfare history over the years, the high likelihood that Patricia would reinsert herself with the family if Autumn was placed with the R.'s, and the quality of Autumn's placement with the C.'s. Based on these concerns, Ms. Friedrich believed there was good cause to deviate from the ICWA placement preferences.

Teddee-Ann Boylan

Adoptions specialist Teddee-Ann Boylan testified that the C.'s were willing to maintain contact with Autumn's grandparents and half siblings, provided it was not detrimental to Autumn to do so. Teresa, on the other hand, told her that if Autumn were placed with her, she would never allow Autumn to see the C.'s again. According to Ms. Boylan, that would be very harmful to Autumn since she saw the C.'s as her parents. She believed the C.'s were attempting to keep Autumn connected with her Chickasaw culture by using books, flashcards, and a "phone app" for the language. And they had indicated a willingness to do whatever they needed to do.

Based on her assessment of Autumn and her placement with the C.'s, Ms. Boylan recommended that Autumn be adopted by the C.'s.

Beatriz R.

Autumn's aunt Beatriz testified regarding the October 1998 substantiated referral. As she described it, when she was 14 years old, she snuck out of the house through her bedroom window to go to a school dance. José went to pick her up when the dance was over, but she was not there because she had been dropped off at home. He questioned her about it when she got home, and when he was trying to talk to her, she walked away, so he grabbed her arm, leaving a bruise. The bruise was visible when she removed her sweater at school, and social services got involved. Beatriz denied telling her teacher that José had hit her with a belt or was an alcoholic. Beatriz also denied that her parents were abusive to her or her siblings or that her father ever hit her mother.

Beatriz admitted having a conviction for petty theft. She claimed, however, that her friend had actually committed the theft but she happened to be there. When asked

why she never followed up on seeking an exemption of her conviction in order to be considered a placement option for Autumn, Beatriz testified that since her father's request for an exemption had been granted, it was expected that Autumn would be placed with Teresa so it was unnecessary for Beatriz to pursue her own exemption.

J.R.

Sixteen-year-old J.R., Patricia's son and Autumn's half sibling, had lived with the R.'s since he was a baby. He testified that starting in fourth or fifth grade, he participated in his native culture by attending powwows, brush dances, native culture exchanges, conferences, and regular activities through the Northern California Indian Development Council (NCIDC). He also did beading and feather work and worked with native children.

J.R. testified about the incident in 2006 when he and M.C. were moved to foster care. As he described it, one of the neighborhood children told him and his brother that foster care was fun, so J.R. slapped M.C. with his lunch pail, bruising his arm, and scraped up his own knuckles. They then lied that Teresa had hit them, causing the injuries. They later admitted what they did, and they were returned to Teresa's care.

J.R. knew Autumn but he did not see her very often because visits typically occurred when he was in school. He had never seen her at any of the Yurok activities he attended.

J.R. denied he had ever been abused by either of his grandparents. He denied Teresa ever hit him with a back scratcher, even though Teresa admitted she had. He also testified he had never seen his grandfather drink.

Regarding an incident in June 2013, J.R. claimed he had attacked Teresa because he had not taken his ADHD (attention deficit hyperactivity disorder) medication and she merely tried to defend herself.

J.R. was earning two D's, one in English and one in math. He was receiving B's and C's in his other classes. The previous year, he had failed English.

J.R. acknowledged he was on probation following his arrest for attempting to steal electronics from Walmart.

M.C.

Fourteen-year-old M.C.—also Patricia's son and Autumn's half sibling—had lived with the R.'s since he was three. Consistent with his brother's testimony, he claimed he and J.R. had been moved from their grandparents' home to foster care after they made bruises on each other, which they did because they had heard foster care would be fun.

M.C. saw Autumn every few weeks because he was pulled out of school so he could attend the visits. He was earning F's in English and physical education and B's and C's in his other classes.

M.C. denied that his grandparents physically abused him, although he acknowledged they spanked him. He claimed he had never seen José drink alcohol, although he remembered when José was jailed for driving under the influence.

Joseph Giovannetti, Ph.D.

Dr. Giovannetti testified on Teresa's behalf as an expert in Native American culture. In his opinion, the Chickasaw culture places a high value on the matrilineal line. He believed it would be detrimental for an Indian child not to have a connection to the tribe's culture, and it would be detrimental to the Chickasaw tribe to lose an Indian child.

Phil Freneau, Ph.D.

Dr. Freneau, an expert in child development bonding, testified concerning a bonding evaluation he conducted of the C.'s and Autumn. According to Dr. Freneau, factors relevant to the question of bonding include the length of time the child has been with the family, the behavior of the child, reciprocal relationship (attachment), and family identification. If even one of those criteria is present, bonding exists; the more criteria present and the longer the time together, the stronger the bond is likely to be. In this case, Dr. Freneau saw indication of three of the four factors—quality primary caretaking over a long period of time, Autumn's behavior, and reciprocal attachment—which were positive indicators of bonding. He did not see any negative indicators suggesting a lack of bonding.

In Dr. Freneau's opinion, Autumn had a strong bond with the C.'s, and if that bond were disrupted, there would likely be "a whole series of cascading effects" in her

future. He believed moving her to a caretaker who expressed hostility towards the C.'s would exaggerate the harm she would suffer. As he described it, if a child's primary bond is severed, the child often displays self-regulation issues, a problem that can last a lifetime and can evolve into antisocial and destructive behavior. According to Dr. Freneau, the risk to Autumn of suffering harm from severing her bond with the C.'s would increase if Autumn were placed in a home that had a lengthy history of child welfare referrals and a documented history of violence.

Given that Autumn had been placed with the C.'s since she was eight months old, Dr. Freneau could not conceive of a situation where it would be in Autumn's best interest to remove her from that home. He acknowledged, however, that were a child to transition out of a bonded household, a person with sufficient experience could help ameliorate some of the potential consequences of severing that bond.

Linda C.

Linda C. had been Teresa's neighbor for 25 years. She testified that she had never observed either Teresa or José inappropriately punish their grandchildren, and had not seen José drink for about three years. She was present when Teresa and adoptions specialist Boylan had a conversation regarding Autumn having continued contact with the C.'s if she were placed with Teresa. According to Linda, Teresa said she did not want Autumn to have contact with the C.'s because she was scared the C.'s would coach Autumn to make false allegations about her and another dependency case would be initiated. She was aware the family had numerous child welfare referrals, but believed Teresa's other neighbor reported about 80 percent of them.

Rich England

Rich England was a member of the Yurok Tribe and testified as an ICWA expert on behalf of the Chickasaw Nation. He believed the Department had not made active efforts to locate an ICWA-compliant placement because it made no attempts to pursue placement with Beatriz when it appeared Autumn could not be placed with her grandparents. He believed, however, that if the Department had "diligently looked" at Teresa, Beatriz, and the C.'s, including conducting home assessments of all three, then

active efforts had been made. In the absence of a home study, he would not consider there to have been active efforts. He also believed the Department should have been contacting other local tribes and national programs, such as the Bureau of Indian Affairs (BIA), to find a possible native home for Autumn. Mr. England was not aware of any effort the Department made to place Autumn with extended family or the Chickasaw tribe.

If the Chickasaw tribe said that they did not believe the C.'s to be a culturally appropriate placement for Autumn, Mr. England did not think the Department should place her with that family and should instead follow the tribe's placement preferences. The fact that the R.'s had a large number of child welfare referrals, some of which were substantiated, did not change his opinion. He agreed, however, that domestic violence in the home would be a concern.

According to Mr. England, in order to bond with her Chickasaw culture, Autumn would need to do more than review flashcards at home, such as participating in native community events and Chickasaw traditions. Interaction with family members who are a part of the Indian community would also be important for Autumn to develop an identity as a native person. Mr. England testified that J.R. had been involved in Native American cultural activities, such as traditional dugout canoe making. He had also seen Teresa involved in the Yurok community and supporting her grandchildren at the NCIDC. He had also seen her observing brush dances with the grandchildren.

Under cross-examination, Mr. England acknowledged that in June 2011, he had prepared a report for the Department in which he opined that Teresa was stretched too thin by caring for her other grandchildren to be a placement option for Autumn. He claimed his opinion changed because he did not previously have all relevant information.

Kathleen E.

Kathleen E. knew the R.'s from times when they would come over for a visit and her husband and José would drink and party "a lot." She also babysat the R.'s grandchildren when Teresa was out of town tending to her sick son. According to

Kathleen, the children were "totally, totally frightened" of being sent to José if they were misbehaving.

Kathleen described one particular incident that occurred when she was babysitting. J.R., who was in third or fourth grade at the time, would not settle down so she sent him to José, who was in his bedroom. After a few minutes, she went into the bedroom and found them in bed under the covers. José had his hands near J.R.'s genitals and asked him, "Is this okay?" The next day, she asked J.R. if José had "played with his personals," and J.R. said that he did. A.G., who was two years old at the time, also said that José touched her "personals." Kathleen told Teresa what had happened, but Teresa did not believe José was molesting his grandchildren. Kathleen reported the incident to law enforcement a few weeks later.

J.R. was recalled to testify. He denied José ever touched his genitals. He recalled the incident Kathleen described, but according to him, he was acting out and Kathleen "backhanded [him] in the face" so he went into his grandfather's room. His grandfather asked if he was okay and rubbed his back to comfort him while he lay on the top of the blankets. He saw Kathleen walk into the room and assumed she was looking for him to apologize for hitting him. He denied A.G. was afraid of José, saying, "Everybody loves my grandpa," and he denied Kathleen ever asked him about what went on in the bedroom.

Teresa

Teresa's testimony began with her offering explanations for the many child welfare referrals the Department had received regarding her family, as follows:

As to an October 2013 sexual abuse allegation concerning An., the allegation came from a dentist who saw red marks in An.'s mouth. Teresa explained that he had accidentally poked himself with a toothbrush.

As to the June 29, 2013 incident involving J.R., Teresa testified that J.R. had not been taking his medication and was becoming really aggressive. She asked him to be quiet, but he instead started saying "really bad things" to A.G. Teresa picked up a little stick from the table, batted his leg with it, and told him to stop being rude. When she told

him to go to his room, he became very upset and started pushing her. As they tussled, she accidentally scratched him. M.C. became scared J.R. was going to hurt Teresa so he called 911.

Concerning a referral in May 2012 regarding José hitting Jo., Teresa denied José hit Jo. As she described it, Jo. was upset about having to go to bed so he threw his game controller, breaking it, and started swearing. José grabbed him by the back of his pants and carried him to bed. According to Teresa, Jo. has "problems" because he was a "meth baby." Jo. often said that Teresa hit him, but it was not true.

Teresa acknowledged that José had spanked the children hard enough to leave bruises but he never beat them with a belt or otherwise. She also denied he had ever sexually abused the children. She acknowledged Kathleen E. had conveyed her belief that José had sexually abused J.R. and A.G., but she asked the children and they denied it. Law enforcement conducted an investigation of the allegations and took no further action. Teresa also acknowledged that José drank a lot in the past, especially when their son died, but now he only drank occasionally.

Concerning the day Jo. went to school with a bloody nose, Teresa testified that he was jumping on the bed and fell, causing the nose bleed. He was also on medication that caused nosebleeds. She acknowledged that she did spank the children, but claimed she had not spanked Jo. on that occasion.

Teresa denied calling the Department in January 2010 to request that her grandchildren be placed in foster care. She claimed that she contacted the Department for help with the children while she took care of her dying son. She was told to contact the Del Norte Child Care Council, which suggested putting the children in separate homes, but she did not want to do that.

Teresa acknowledged a time when Jo. was six or seven years old that she disciplined him and caused a bruise. She also testified that when the children talked back or threw fits, "you just come back and you spat 'em on the butt," which was not the same as spanking them. She denied that she spanked A.G., An., or M.C., and said that Jo. was big enough he no longer needed to be spanked.

Turning to the substantiated referrals, Teresa testified that when J.R. and M.C. were temporarily moved to foster care, they had caused their own injuries. And even though the case was dismissed, Teresa voluntarily completed a parenting class.

As to the November 2006 incident when Jo. was disruptive at Head Start, Teresa claimed that when she walked into the classroom to pick him up, she became very upset when she saw that the teacher "had [her] arms around him very, very tight." She told the teacher to let go of Jo. and pulled him out of the room. She was still on friendly terms with the teacher, but she believed the teacher had used inappropriate force.

As to the 1998 incident concerning Beatriz, Teresa explained that Beatriz had a habit of sneaking out her bedroom window at night. She and José tried to stop her, but she had succeeded on this particular night. José saw her when she was sneaking back in and he grabbed her arms.

Teresa denied ever telling Teddee-Ann Boylan that the C.'s would never see Autumn again if she got custody of her. According to Teresa, she told Ms. Boylan she was afraid she would never see Autumn again if the C.'s adopted her. She said she was willing to transition Autumn to her home in a manner that would be best for Autumn, and she would want Autumn to see Amanda. She believed that if Autumn could not be placed with her, she should stay with the C.'s.

Concerning a time 911 was called due to an altercation between José and Teresa, Teresa testified that they had a disagreement and were yelling and José accidentally pulled her hair when she was trying to close the door. J.R. called 911, and Teresa took the phone away from him and said they did not need help, although law enforcement responded anyhow. She denied José had slapped her and did not know why she would have told the police that he did.

Teresa acknowledged a conviction for petty theft, but claimed it arose out of a misunderstanding. She pleaded guilty because she "didn't want to waste a lot of time with it." She also acknowledged José's arrest for transportation and sales of methamphetamine, but again claimed it was a misunderstanding.

As to an August 2005 incident, Teresa had no recollection of pulling J.R. by the arm, throwing him into the car, and slapping him in the face, stating, "I think that's just the next-door neighbor talking."

Concerning a March 2006 incident in which J.R. accused her of hitting him with a stick, Teresa testified that she merely used a back scratcher to tap him on the leg. Teresa acknowledged that she had agreed with the Department that she would no longer touch the children with a stick, but she subsequently tapped J.R. with a stick when he was being defiant.

Teresa denied spanking Jo. in November 2007 for going to the bathroom in his pants. She also denied an incident in May 2012, when Jo. reported that José hit him in the face and then later changed his story after Teresa told him that was not what happened. According to Teresa, "[Jo.] says a lot of things. . . . He has mental issues, [Jo.] does."

Teresa also testified about an occasion on which J.R. and M.C. were fighting. She intervened, accidently scratching J.R. under his eye and bruising M.C.

As to an allegation that J.R. had once stated, "My uncle sucked my wee wee," Teresa said that her two older sons—J.R.'s uncles—had been talking about Pee Wee Herman and how he got kicked off television for displaying his privates. That, Teresa believed, was what J.R. had been referring to.

Teresa acknowledged that she was not very connected to the Chickasaw tribe, because they did not have many local activities. She was, instead, usually involved with the Tolowa and Yurok cultures.

Teresa believed she could enforce the necessary boundaries with Patricia if Autumn was placed with her, including obtaining a restraining order if necessary.

Deborah W.

Deborah W. was a childcare provider for the R. family in 2010 and 2011, babysitting six or seven times when Teresa took her ill son for treatments. During that time, she never noticed any major injuries, bruises, or scratches on the children. She

never suspected either Teresa or José of using corporal punishment on the children, nor did she ever observe José intoxicated.

Wendy J.

Wendy J. had provided foster care for Autumn for the seven months prior to her placement with the C.'s. According to Wendy, during that time she regularly interacted with Teresa, who consistently indicated that she did not intend to take in Autumn, preferring instead that she stay with the J.'s or be placed with Beatriz. She told Wendy she did not want to take Autumn because she had too much on her plate with the other children and because of the size of her home and her age.

Caleb

Caleb testified that he and Amanda became Autumn's foster parents in October 2011, after Teresa and Patricia had repeatedly asked them to take her in. Caleb was Patricia's parole agent, and Teresa was constantly contacting him, seeking his help to get Patricia to stop abusing drugs, having children she could not take care of, and showing up at Teresa's house. Autumn had lived with the C.'s continuously since that time.

The C.'s had been designated Autumn's de facto parents. They were willing to enter into a postadoption contact agreement to allow Autumn to have contact with her siblings and grandmother.

According to Caleb, Autumn considered the C.'s other daughters her sisters and looked to all of them as her family.

Caleb described how the increase in visits with Teresa and her siblings caused Autumn to excessively bite her nails, hit people, and choke the family dog.

Amanda

Amanda testified that when the C.'s first took Autumn into their home, they expected it to be on a temporary basis because it appeared Patricia was going to reunify with Autumn. Amanda spoke with Chickasaw ICWA social worker Regena Frye and made it clear that if Patricia did not reunify, the C.'s wanted to be considered as a long-term placement for Autumn. Amanda did not want to take in a child who would later be

moved, however, and Ms. Frye confirmed they were an ICWA-compliant placement for Autumn. It was only after the tribe changed its mind and wanted Autumn placed with Beatriz that Ms. Frye advised Amanda they were not ICWA-compliant.

Amanda was not a tribal member, but her adoptive father was a member of the Yurok tribe, and she was raised with knowledge of Indian cultures. If allowed to adopt Autumn, the C.'s would ensure that she remained connected to the Native American community. Amanda already encouraged Autumn to look at Chickasaw language flashcards and language applications, to make beaded necklaces, and to hunt, fish, and pick berries.

The Court's Order

At the conclusion of evidence, the court heard lengthy closing argument from all counsel. After taking a recess, the court issued its ruling. The ruling was conscientious and thorough, beginning with a lengthy exposition about the importance of ICWA, the court's belief that ICWA was passed for "good reason," and the diligent efforts the court always made to comply with the statutory scheme, the goals of which it was sympathetic to. It also noted the importance of the tribe's recommendation concerning placement, indicating that in most cases, the best interests of the child and the tribe were aligned.

After noting that both ICWA and the Chickasaw Nation Code set forth placement preferences that were binding on the court unless it found good cause to deviate therefrom, the court proceeded to do just that. It explained:

"The one overwhelming critical issue that I find in this case that is the reason to deviate is the issue of bonding and the attachment that has occurred and the damage that is likely to occur if the bond is shredded between Autumn and the people who she believes are her parents, what are referred to as psychological parents, and that is the [C.'s].

"I found the testimony of Dr. Freneau to be compelling. He was the only person who qualified as an expert who has met with Autumn with the exception maybe of Teddee Boylan, whose testimony was consistent with that of Dr. Freneau.

"I find that the damage that would occur—likely occur to this child is great. He referred to the cascading effects that could occur if this child was taken from her adoptive family. His testimony was also supported by the testimony of not only Ms. Boylan, but Heather Friedrich, Susan Wilson, Georgia England and the [C.'s].

"Dr. Freneau indicated that attachment and bonding is the fundamental skill and the fundamental level that all other skills depend upon in development. And breaking the attachment will lead to—or can lead to self-regulation disorders, destruction and anti-social behavior with cascading effects in future development.

"He indicated that avoiding these effects requires expertise, cooperation and skills that I find the [R.] family simply is unlikely to have, given the long history of, for lack of a better word, I'm going to refer to as, dysfunction and turmoil. And I am conscious of the fact that there could be professional help, but, still, it appears to me that the family is ill suited and ill equipped to provide the support that would be necessary to avoid damage to this child if she was removed from the [C.'s].

"I have no faith that the grandmother's home is a 'very positive experience' that Dr. Freneau indicated would be necessary and certainly optimum for any new family receiving the child. He indicated that homes with problems, such as have been identified in this case, in excess of 30 CPS referrals, history of meth, domestic violence, 'greatly reduces the possibility of successful transition.' And I find that to be [the] overwhelming consideration in making my decision today."

Noting that a court cannot take bonding into consideration if the bonding resulted from an ICWA violation, the court found there was no such violation in Autumn's initial placement with the C.'s. It found that Teresa was not capable of taking care of Autumn at that time, in light of the turmoil in her life resulting from her son's terminal illness and the grandchildren in her care. And Patricia and Teresa both identified the C.'s as the family they wanted to take care of Autumn.

The court also expressed its opinion about the credibility of certain witnesses, finding that Teresa, Beatriz, J.R., and M.C. had not been truthful:

"I have to say though that—and it saddens me to say this, I found real problems with the grandmother's credibility, as well as Aunt Beatriz and the two boys, [J.R.] and [M.C.], who testified. I don't think that they were truthful with me with regard to the grandfather drinking.

"There were reports going back to 1998 that Beatriz indicated that grandfather was an alcoholic and was beating her with a belt. The records that are extant at this point do not indicate that he ever denied that he beat Beatriz with the belt. She—I believe she reported it to multiple sources. . . .

"Beatriz, as her mother did, both downplayed—tried to explain away criminal convictions with regards to thefts that I, frankly, agree with the argument made by Mr. Mavris [(counsel for the C.'s)] that nothing was ever they're wrong or I made a mistake or I fixed it. It was, like, there was always an explanation and, frankly it just didn't ring true. . . ."

Concerning physical abuse of the children, the court said this:

"It appears to me by a preponderance of the evidence that there is domestic violence in the home that includes beating the children to the extent that bruises are left. It includes the grandfather attacking the grandmother when she made the call—she took over the call after her grandson called 911. In includes [J.R.] attacking his grandmother. And that's very recent, within the last year. There's also grandmother testified that [J.R.] was saying horrible, horrible things to his little sister, [A.G.], which is what precipitated that last argument. [¶] . . . [¶] . . . I think the evidence was very clear that the bruises were left. That's—there's no question. There were lots of other instances where there [were] scratches and other things that it seemed like the family tried to explain away with the exception of grandma who did admit that the grandfather sometimes has left bruises on the children.

"But [Jo.] has repeatedly reported that he is being beat [*sic*]. Grandma just says, well, he doesn't tell the truth. But there are times when the kids have ended up with injuries, and it appears to me by a preponderance of the evidence that there is inappropriate corporal punishment being used or has been used. [¶] . . . I think overall, I

think the department is correct, it shows a pattern of abuse and neglect that has occurred and that the child in my opinion—despite what I'm being told, I think the children have been beat [*sic*]."

The court also found that the Department had made active efforts to locate an ICWA-compliant placement, including seriously considering Beatriz's home, providing her with the necessary paperwork, seriously considering Teresa's home, following Patricia's initial request to place Autumn with the C.'s, evaluating the appropriateness of placement with the C.'s, seeking other placement options from the Chickasaw Nation, maintaining frequent contact with the Chickasaw Nation, and communicating with Keith Taylor and Rich England.

The court further found that under the Chickasaw Nation Code, the C.'s qualified as a fifth placement preference and that there was no other suitable home with a higher preference under the Tribe's code.

The court ordered parental rights terminated and Autumn placed for adoption, designated the C.'s as the prospective adoptive parents, and ordered the parties to attend mediation to work out a visitation schedule between Autumn and her siblings.

On May 28, 2014, the court entered a written order terminating the parental rights of Patricia and Bryan and specifying adoption as the permanent plan.

Patricia filed a timely notice of appeal.[4]

II. DISCUSSION

The Applicable Provisions of ICWA and California Law

Consistent with the provisions of ICWA (25 U.S.C. § 1915(a)), California law mandates that in any adoptive placement of an Indian child, preference is to be given to a placement with one of the following, in descending order of priority: (1) a member of the child's extended family, as defined in section 1903 of ICWA; (2) other members of the child's tribe; and (3) another Indian family. (§ 361.31, subd. (c).) ICWA defines

[4] Bryan also appealed. After he submitted a no issues statement pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 and *In re Sade C.* (1996) 13 Cal.4th 952, we dismissed his appeal.

"extended familymember" as "a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2).) The Department must make active efforts to comply with the order of preference specified in section 361.31. (§ 361.31, subd. (k).)

Section 361.31, subdivision (d) instructs, however, that if the child's tribe has established a different order of placement preference, the court "shall follow the order of preference established by the tribe . . . ." (Accord Cal. Rules of Court, rule 5.484(b)(4).) The Chickasaw Nation Code provides for the following placement preferences, in descending order of priority: "1. the natural Parents, adoptive Parents, or Stepparents as the case may be; [¶] 2. any person over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, and their spouse; [¶] 3. a Traditional Custodian and their spouse, if applicable; [¶] 4. a Foster Home licensed by the Department; [¶] 5. a Foster Home licensed by any other licensing authority within the state or an Indian Foster Home licensed by some other tribe; [¶] 6. an institution for Children licensed or approved by the Department with a program suitable to meet the Child's needs."[5] (Chickasaw Nation Code, § 6-201.9.)

Significantly, the court may deviate from the placement preferences for good cause. (§ 361.31, subd. (h).) The considerations that may support a good cause finding include the following: the requests of the parent, Indian custodian, or child (if of sufficient age), the "extraordinary physical or emotional needs of the Indian child as

[5] At the outset of the permanency hearing, Chickasaw social worker Andrea Richards represented that the tribe had amended the Domestic Relations and Families title of the Chickasaw Nation Code effective April 25, 2014, just weeks before the permanency hearing, to reflect these new placement preferences for Chickasaw children. It appears to us that the amendment was actually effective September 30, 2014, well after the permanency hearing in this case.

Section 6-201.4 of the Chickasaw Nation Code defines "Department" as "the Chickasaw Nation department assigned the responsibility of protecting Children under this Deprived Children's Code." (Chickasaw Nation Code, § 6-201.4, subd. A.16.)

established by a qualified expert witness," or the "unavailability of suitable families based on a documented diligent effort to identify families meeting the preference criteria." (Cal. Rules of Court, rule 5.484(b)(2); see also Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584, 67594, F.3 (Nov. 26, 1979) (former Guidelines) [determination of good cause not to follow ICWA placement preferences "shall" be based on the same considerations]; *Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 643 [in making its good cause evaluation, the court is not restricted to the three considerations contained in the guidelines].)[6] "[A] court may find good cause when a party shows by clear and convincing evidence that there is a significant risk that a child will suffer serious harm as a result of a change in placement." (*In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1354, fn. omitted.)

Against this statutory framework, we turn to the issues raised on appeal.

The Trial Court's Finding that the Department Made Active Efforts to Comply with the Placement Preferences Was Supported by Substantial Evidence

Patricia first challenges the juvenile court's finding that the Department made active efforts to comply with the applicable placement preferences. She contends the Department merely made "passive efforts," arguing that it identified issues with placing

[6] In 1979, the BIA enacted guidelines for state courts presiding over Indian child custody proceedings. Effective February 25, 2015, the BIA modified those guidelines, providing in part a new standard for determining whether good cause exists to depart from the ICWA placement preferences. (Guidelines for State Courts; Indian Child Custody Proceedings, 80 Fed.Reg. 10146, 10158, F.4(c) (Feb. 25, 2015.)) There is no indication that the amended guidelines, revised after the court here entered its order terminating parental rights and finding good cause to deviate from the ICWA placement preferences, are to be applied retroactively. We conclude they are not, and they therefore do not influence the outcome of this case. (See, e.g., *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587 [common law assumption that legislation is not to be applied retroactively]; *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393 ["It is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent."].) We further note that "the Guidelines are not binding on state courts." (*Fresno County Dept. of Children & Family Services v. Superior Court, supra,* 122 Cal.App.4th at p. 642.)

Autumn with Teresa and then used those shortcomings as a the reason not to place Autumn there. Instead, she contends, the Department should have "actively work[ed] with maternal grandparents to address the issues and provide them with the tools necessary to have Autumn placed with them. [Citation.] The structured decision-making tool showed maternal grandparents may need a high level of support to successfully transition Autumn to their care. . . . But the department failed to assess what support services were necessary and/or available." We review the court's factual finding of active efforts for substantial evidence (*C.F. v. Superior Court* (2014) 230 Cal.App.4th 227, 242), and conclude the court's finding was supported by substantial evidence.

As the Department explained in its section 366.26 report, the Chickasaw tribe was originally of the position that the C.'s were an ICWA-compliant placement. Thus, throughout the initial phases of the dependency proceeding all parties were operating under the belief that Autumn was in an ICWA-compliant placement. Only well into the proceeding did the tribe change its position and assert that the C's were not in fact ICWA-compliant. At the tribe's request, the Department looked into Beatriz's house as a placement option, providing Beatriz with a placement packet. While she returned it in December 2013, she never submitted the paperwork to seek exemption of her criminal record, nor had her husband submitted to fingerprinting.

The Department had also diligently assessed the R.'s as a placement option. Social worker Friedrich visited the R.'s home multiple times, interviewed Teresa and José, discussed their child welfare history, reviewed with them the guidelines for substitute care providers, and inspected the house for any physical risks to Autumn. The Department held a meeting to discuss the viability of both the C.'s and R.'s homes as placements for Autumn, identifying 17 concerns about placement of Autumn in the R.'s home. By comparison, the Department identified only two concerns with the C.'s home. The Department also used SDM tools to evaluate the R.'s home, which tools indicated a high to very high risk of abuse or neglect and a high need for support if Autumn was placed with her grandparents.

The Department was also in frequent contact with the Chickasaw Nation, including asking the Chickasaw Nation's ICWA social worker in December 2013 if the tribe would like the Department to consider any other relatives for placement. The social worker responded that she was " 'not aware of any other family members at this time.' " The Department thus pursued all known potential placements for Autumn.

Patricia's claim that the Department was obligated to "actively work with the [R.'s] to address the issues and provide them with the tools necessary to have Autumn placed with them" ignores the posture of the case. During the reunification stage, the Department must make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family. (*C.F. v. Superior Court, supra,* 230 Cal.App.4th 227, 237–239.) Once reunification services have been terminated, however, the focus shifts to the needs of the dependent child for permanency and stability. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) At that stage, the "active efforts" obligation imposed upon the Department changes: the Department must now make active efforts to locate a suitable placement for the child that complies with the placement preferences of ICWA or the child's tribe. (§ 361.31, subd. (k).) Patricia cites no authority suggesting that the Department was obligated at this late stage to work with the R.'s to "address their issues" and attempt to turn an unsuitable household—one plagued by child welfare referrals, child abuse, and domestic violence—into a suitable one. The only authority she cites—*In re K.B.* (2009) 173 Cal.App.4th 1275, 1287—involved active efforts during the reunification period.

Patricia also relies on the BIA guidelines, which suggest that a diligent attempt to comply with the placement preferences includes, at a minimum, contact with the child's tribal social service program, a search of all county or state listings of available Indian homes and contact with nationally known Indian programs with available placement resources. (Former Guidelines, *supra,* 44 Fed.Reg., p. 67595, F.3, Commentary.) But no one—not Patricia, not Teresa, not the Chickasaw tribe—wanted Autumn placed with a family of strangers if she was not placed with Teresa or Beatriz. Patricia's suggestion

that active efforts required the Department to look for other Indian homes in Del Norte County or the State of California or elsewhere in the nation is simply fatuous.

Substantial Evidence Supports the Juvenile Court's Finding of Good Cause to Deviate from the Applicable Placement Preferences

Patricia next argues that the juvenile court erred in finding good cause to deviate from the applicable placement preferences. Before reaching that issue, we note that there has been extensive debate—both below and on appeal—as to whether the C.'s were an ICWA-compliant placement under either section 361.31, subdivision (c) or the Chickasaw Nation Code. Patricia contends they were not, arguing they were not extended family under section 361.31, since Amanda and Autumn are second cousins, once removed. She also argues they did not qualify as the fifth placement preference identified in the Chickasaw Nation Code, as the juvenile court found, because the code defines "Foster Home" as "the private residence of a Tribal Resource Parent who provides Foster Care for a Child." (Chickasaw Nation Code, § 6-201.4, subd. A.23.)

The Department, on the other hand, contends the C.'s were a preferred placement. It notes that at the outset of Autumn's placement with the C.'s, the tribe confirmed that the C.'s were an ICWA-compliant placement. And ICWA expert Keith Taylor testified that the C.'s qualified as Autumn's extended family.

We need not resolve this dispute because even if we were to conclude that the C.'s were not an ICWA-compliant placement of equal or superior priority to the R.'s under either the Welfare and Institutions Code or the Chickasaw Nation Code, we would nevertheless affirm the juvenile court's order because its finding of good cause to deviate from the placement preferences was supported by substantial evidence. (See *In re N.M.* (2009) 174 Cal.App.4th 328, 335 ["Our review of a juvenile court's finding of good cause to modify the placement preference order is subject to the substantial evidence test."].)

The juvenile court's "overwhelming consideration" was Autumn's bond with the C.'s and the trauma she would suffer if that bond was severed. We agree Autumn's attachment to her foster family supported the trial court's finding. Like the court, we find

Dr. Freneau's testimony "compelling," including his expert opinion that bonding is a foundation upon which a child's healthy development depends and that breaking that attachment can lead to self-regulation disorders and destructive and antisocial behavior that can have cascading effects on future development. Dr. Freneau testified that such outcome could be avoided or minimized with sufficient skills and expertise but, as the court rightly noted, given the "dysfunction and turmoil" surrounding the R. family, the family was "ill suited and ill equipped" to provide Autumn the support she would need to avoid harm if she was removed from the C.'s. Dr. Freneau indicated that a home with problems such as those existing in the R.'s household—including in excess of 30 child welfare referrals and a history of drug problems, child abuse, and domestic violence—" 'greatly reduces the possibility of successful transition.' " Given that Autumn had lived with the C.'s since she was eight months old and was strongly bonded to them, he could not conceive of a situation where it would be in Autumn's best interest to remove her from that home. And, as the trial court noted, Dr. Freneau's testimony was consistent with the testimony of Ms. Boylan, Ms. Friedrich, Ms. Wilson, Ms. England, and the C.'s, all of whom described Autumn's strong attachment to her foster family.

Patricia objects that it is impermissible to consider bonding as a basis for deviating from the placement preferences because the bonding between Autumn and the C.'s resulted from an ICWA violation. Indeed, the court was "very cognizant that the law is that you can't use bonding to bootstrap in an exception to the Indian Child Welfare Act and that the courts have said that even if trauma was to result to a child because of the breaking of the bonding that the Court must still follow ICWA . . . if the bonding resulted from a violation of the Indian Child Welfare Act." (See, e.g., *In re Desiree F.* (2000) 83 Cal.App.4th 460, 476 ["Factors flowing from [a child's] current placement in flagrant violation of the ICWA, including but not limited to bonding with her current foster family and the trauma which may occur in terminating that placement, shall not be considered in determining whether good cause exists to deviate from the placement preferences set forth in the ICWA."].) But the juvenile court found that Autumn's

attachment to the C.'s did not result from an ICWA violation, and that finding is supported by substantial evidence.

At the time of the original disposition, the juvenile court determined that Teresa was ill-equipped to take Autumn into her home, in light of her ill son and the six other grandchildren for whom she was caring, including at least two with special needs. Rich England, who at that time was serving as an expert for the Department, had reached the same conclusion. In the words of the juvenile court here, "[I]t did not appear to me that she was able to do an adequate job with those other kids without adding an infant. It just made no sense to me at the time that that would be appropriate. So to me it's clear there was—there were no other options available at that time."

Furthermore, there was evidence at trial that Teresa did not in fact want custody of Autumn in the earlier months of the dependency proceeding. Wendy J., Autumn's foster parent prior to the C.'s, testified that Teresa repeatedly informed her she did not intend to take care of Autumn. And then, of course, when Autumn was eight months old, Patricia and Teresa expressly asked the C.'s to take Autumn into their home. Before the C.'s agreed to do so, Amanda confirmed with the Chickasaw Nation that they were an ICWA-compliant placement.

This evidence supports the juvenile court's finding that Autumn's placement with the C.'s was not in violation of ICWA, and that placement led to a bond that the juvenile court could consider when making its good cause evaluation.

In addition to the bond Autumn shared with the C.'s, the juvenile court's determination of good cause to deviate from the ICWA placement preferences was supported by the overwhelming evidence that the R.'s home was unsuitable for her placement. (See Cal. Rules of Court, rule 5.484(b)(2) [good cause to deviate from placement preferences may include unavailability of suitable families].) It is sufficient to point to the over 30 child welfare referrals involving the R.'s dating back to 1984, all of which involved allegations of physical abuse, sexual abuse, or neglect, and five of which were substantiated. There was extensive testimony detailing the numerous incidents of physical abuse by both Teresa and José of their children and grandchildren. While some

of the incidents were relatively old and involved the R.'s children rather than their grandchildren, many of the incidents occurred much more recently, and social worker Susan Wilson did not believe Teresa's situation had improved and that she lacked the patience to deal with young children: "I think that she believes in corporal punishment, that she and her husband both believe in corporal punishment, that . . . the kids are hit." Further, the Department's assessment of the R.'s home suggested a high to very high risk of abuse or neglect if Autumn were placed with her grandparents.

Additionally, there was evidence of criminal convictions involving multiple members of the house, including Teresa, Beatriz, and J.R. The evidence also showed that Teresa was overwhelmed with the care of the numerous grandchildren in her custody, and that she lacked the patience and ability to care for one more. The court found the testimony by Teresa, Beatriz, J.R., and M.C. denying any physical abuse to be lacking in credibility, and expressly found "by a preponderance of the evidence that there is domestic violence in the home that includes beating the children to the extent that bruises are left."

In short, the "dysfunction and turmoil" pervasive in the R.'s home supported the court's finding that it was not a suitable placement for Autumn.

A third consideration supporting the juvenile court's good cause evaluation was the evidence that Teresa was unable to set boundaries with Patricia and that Patricia continued to involve herself with the family. Social worker Friedrich believed there was a high likelihood that Patricia would reinsert herself with the family if Autumn was placed with the R.'s. , an opinion shared by supervising social worker Wilson, who believed Teresa would let Patricia into the home if she showed up.

A final consideration supporting the juvenile court's good cause finding was the evidence that the R.'s would sever any connection between Autumn and the C.'s if she were placed with her grandparents. The juvenile court expressly found that Teresa stated she would not let the C.'s ever see Autumn again, and there was substantial evidence supporting this finding in the form of testimony by Ms. Boylan and Ms. Friedrich. And

according to the expert opinion of Dr. Freneau, severing Autumn's bond to the C.'s would be extremely traumatic for her.

In light of the foregoing, we conclude the juvenile court's finding of good cause to deviate from the applicable placement preference was supported by substantial evidence.

The Trial Court Did Not Abuse Its Discretion by Failing to Apply the Indian Child Exception to Adoption

At a section 366.26 permanency hearing, the juvenile court must make one of six possible alternative plans for the dependent child, with the preferred plan being adoption. (§ 366.26, subd. (b)(1)–(6); *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1416.) If the court finds the child adoptable, it must terminate parental rights unless termination would be detrimental to the child. (§ 366.26, subd. (c)(1); *In re Beatrice M.*, at p. 1416.) Section 366.26, subdivision (c)(1)(B) identifies six circumstances under which adoption would be detrimental to the child. As pertinent here, one such circumstance, known as the Indian child exception, applies where "there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child" because termination "would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights." (§ 366.26, subd. (c)(1)(B)(vi)(I).) Patricia contends the juvenile court erred in failing to apply the Indian child exception here, because termination of her parental rights would substantially interfere with Autumn's connection to her tribal community and with her sibling relationships. We review the juvenile court's order declining to apply an exception to termination of parental rights for abuse of discretion (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1038; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1342), and we conclude there was no such abuse here.

As to Autumn's connection to her tribal community, Autumn was a member of the Chickasaw Nation, and there was no suggestion that she would lose her membership rights or that such rights would somehow be limited by her adoption. Indeed, the Chickasaw Nation never expressed any opposition to termination of parental rights and in fact wanted Autumn adopted.

Additionally, the C.'s repeatedly affirmed they would nurture Autumn's connection to her Native American heritage. While Autumn was in their care, they had already introduced her to flashcards and language applications to help her learn the Chickasaw language and taught her to make beaded necklaces, hunt, fish, and pick berries. Amanda's adoptive father was a Yurok tribal member, and other relatives, including her aunt and cousin, were Native American. Her children were involved in Indian programs, and Amanda intended to facilitate Autumn's participation in local Indian activities, as well Chickasaw tribal activities. Although Amanda and Autumn were second cousins, once removed, the Department's Indian expert, Keith Taylor, testified that Amanda was part of Autumn's Indian family because a cousin is a cousin, regardless of degree. And Amanda was committed to maintaining Autumn's relationship with Teresa and her half siblings, through whom she could further develop her connection to her native heritage.

And the juvenile court observed: "I'm holding the C.'s to their promise that they will do what they can to keep the cultural ties. There's not much you can do with a three-year-old, but they said they have books, they have apps for the phone on the Chickasaw Nation. They have flashcards. They have indicated they have plans to try to travel to Oklahoma to expose her to the tribe. And I think those are all things that would indicate that by being adopted by the [C.'s] that she . . . will not have her ties or chances to develop ties with the Chickasaw Nation . . . severed."

Concerning Patricia's contention that terminating parental rights would damage Autumn's sibling relationships, the C.'s repeatedly affirmed their intent to keep Autumn connected to her grandmother and half siblings. In recognition of the significance of maintaining those relationships, the juvenile court indicated that it was inclined to order increased visitation that would likely include weekend visits so all siblings could be present, and ordered the parties to mediation to come to an agreement on a visitation schedule. That mediation resulted in an agreement for greater visitation between Autumn and her grandparents and half siblings.

Given this, Patricia's claim that the juvenile court abused its discretion in terminating parental rights in lieu of applying the Indian child exception to termination lacks merit.

III. DISPOSITION

The order of the juvenile court terminating parental rights and selecting adoption as the permanent plan for Autumn is affirmed.

_____
Richman, Acting P.J.

We concur:

_____
Stewart, J.

_____
Miller, J.